IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. 454-SB of 2002

Date of Decision: December 17, 2007

Sukhdev Singh

Appellant

VERSUS

State of Punjab

Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Dhruv Dayal, Advocate,
for the appellant

Mr.M.C.Berry, Sr.DAG, Punjab.

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RANJIT SINGH J.

This appeal is directed against the order passed by the Judge, Special Court Mansa on 30.11.1999 convicting the appellant for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'NDPS Act'). The appellant was allegedly found in possession of 20 kgs and 100 grams of chura poppy husk.

The brief facts are that on 15.12.1995, the police party headed by ASI Jagsir Singh was on patrol duty when the appellant was seen in the area of

village Khehra Khurd while coming from opposite direction carrying a bag on his head. On seeing the police party, he made an attempt to escape but was apprehended. He disclosed his name as Sukhdev Singh. Suspecting that he was in possession of some incriminating contraband, option was given to him if he wished to be searched before a Magistrate or a gazetted officer. The appellant opted for being searched in the presence of a gazetted officer. Consent memo was accordingly prepared and was thumb marked by him. The said memo was attested by witnesses as well. On being summoned through a wireless message, DSP Iqbal Singh reached the spot. Karam Singh son of Gehna Singh was joined as an independent witness by the police party. DSP Iqbal Singh disclosed his identity and accordingly search of the bag, recovered from the appellant, was carried out. Quantity of contraband recovered was weighed and came to be 20 kgs. The samples drawn from the bag were got sealed and taken into custody through a recovery memo which was also prepared at the spot. Ruqa was sent to the police station leading to registration of the FIR. Other formalities in regard to investigation like producing the case property before SHO and sealing the same were also completed. Samples were also sent for examination to chemical examiner who submitted his report that these were of chura poppy husk. Challan was ultimately presented leading to conviction and award of sentence of ten years R.I. to the appellant.

The case of the prosecution is supported by four prosecution witnesses. They are Constable Harjit Singh PW-1, ASI Jagsir Singh (Investigating Officer) PW-2, Bikram Singh (retired

Inspector) PW-3 and DSP Iqbal Singh PW-4.

The appellant, when confronted with the evidence and the incriminating circumstances appearing on record against him, denied the recovery and pleaded his false implication. He, however, did not lead any evidence in his defence, even before the trial Court. Counsel for the appellant had mainly relied upon the technical defects which according to him were in the case of prosecution and would lead to create a doubt in the prosecution story, benefit of which is prayed for in favour of the appellant. The plea mainly is that the independent witness was given up on the ground that he was won over and thus the case of the prosecution is supported by the police witnesses alone. It is also pleaded that the seal after use was not handed over by the police officer to any independent witness, which will create doubt in regard to preserving the contraband recovered.

It is noticed that the samples were found intact when received by the chemical examiner. Certificate in this regard was given and is on record. Even the case of the appellant was not that the seal in any manner was tampered with. Merely because the seal was not handed over to any independent witness would not itself be enough to cast doubt in the prosecution story. Plea that gazetted officer summoned was police officer and not any officer who could be considered independent and one could be called, would be of no significance as no such objection was raised at that time. There is nothing on record that the appellant objected to his search by or in the presence of DSP DW-4. He can not now be heard in objecting to his search by or in the presence of only police gazetted officer. In any event this is not a case of personal search which would call for

compliance of provisions of Section 50 of the NDPS Act. The recovery was from a bag which was being carried by the appellant on his head. The presence of gazetted officer was not the essential requirement under law and presence of police gazetted officer is enough to lend assurance to the case of recovery etc. No objection of this nature of requiring the search in the presence of gazetted officer different than police officer can be insisted. Accordingly, I do not find any reason to interfere with the findings recorded by the trial Court and the same are upheld.

It is noticed that the sentence awarded to the appellant is ten years R.I and fine of Rs.One lac. He was further required to undergo R.I. for one year in default of payment of fine. The quantity recovered is 20 kgs of poppy straw which is non commercial in nature. In terms of quantity recovered and the amendment carried out in Section 15 of the NDPS Act, the requirement of minimum sentence to the appellant for ten years R.I. would no more be a requirement under law.

It is now specifically been provided that where the contraband involved is small quantity then the same can be punished with imprisonment which may extend to six months and fine etc. As per Section 15 (b) where the contraband involved is quantity lesser than commercial quantity but greater than small quantity then the R.I. for a term may extend to ten years and fine which may extend to Rs. One lac. It is only when the quantity recovered is found to be commercial then there would be a requirement of awarding a sentence which may extend to 20 years and fine etc.

Considering the quantity recovered, the sentence

awarded to the appellant appears to be harsh and disproportionate to the gravity of the offence alleged. As per record, the appellant has already undergone six years, eight months and thirteen days of the sentence as on 18.10.2003. I think the appellant has suffered much more than the offence alleged would require, Accordingly, while dismissing the appeal the sentence awarded to the appellant shall stand reduced to already undergone. Sentence of fine of Rs.One lac awarded can also not be maintained. Considering that the appellant has already suffered enough, the fine awarded is reduced to a nominal sum of Rs.2,000/- only. In default of payment of this fine the appellant shall undergo 15 days R.I. which shall count from the date of the order. The bail bonds and surety bonds, if any furnished in the trial Court, shall stand discharged.

(RANJIT SINGH)
JUDGE

December, 17, 2007
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